

1 William I. Edlund, State Bar No. 25013
2 Robert H. Bunzel, State Bar No. 99395
3 Howard I. Miller, State Bar No. 251878
4 BARTKO, ZANKEL, TARRANT & MILLER
5 A Professional Corporation
900 Front Street, Suite 300
San Francisco, California 94111
Telephone: (415) 956-1900
Facsimile: (415) 956-1152

6 Attorneys for Plaintiffs KEVIN MARTIN,
DAVID NORRIS and FRANK STONE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

KEVIN MARTIN, DAVID NORRIS, FRANK STONE, individually and on behalf of all other similarly situated,

Case No. 10-04020 CW

**STIPULATION AND [PROPOSED]
ORDER FOR DISMISSAL WITH
PREJUDICE OF DEFENDANT
BRIAN RILEY**

MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED, MERRILL LYNCH & CO., INC., BRIAN RILEY and DOES One through Twenty,

Judge: Hon. Claudia Wilken

Defendants.

Complaint Filed: August 6, 2010
Trial Date: None Set

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Plaintiffs Kevin Martin, David Norris and Frank Stone, through their counsel (“plaintiffs”), and defendant Brian Riley, through his counsel (“Riley”), stipulate as follows:

1. Riley was named as a defendant in this action, originally filed in state court and removed to this Court on September 8, 2010.

2. Riley and his counsel have requested that he be dismissed from this action with prejudice, and plaintiffs agree to dismiss Riley with prejudice, provided that (a) discovery directed to Riley and any required attendance at deposition, pretrial or trial and compliance with

1 the Federal Rules may be obtained through his counsel as if Riley remained a named party; (b) it
 2 will not be relevant or referred to in further proceedings in this matter that Riley was initially
 3 named as a party and later dismissed; (c) Riley through his authorized counsel hereby stipulates
 4 that he has not been injured in any way by having been a named party in this case; and (d)
 5 defendants Merrill Lynch, Pierce, Fenner & Smith, Incorporated and Merrill Lynch & Co., Inc.
 6 agree that all acts of Riley relevant to this case were taken by Riley in the course and scope of his
 7 employment by Merrill Lynch, Pierce, Fenner & Smith, Incorporated.

8 3. Dismissal is as to Riley only and not as to defendants Merrill Lynch, Pierce,
 9 Fenner & Smith, Incorporated or Merrill Lynch & Co., Inc.

10 4. Riley shall bear his own attorney's fees and costs in connection with this
 11 case and this Dismissal, and the remaining defendants will not attempt to reduce or segregate any
 12 of plaintiffs' attorney's fees and costs as related to prosecution of the action against Riley.

13 5. Defendants Merrill Lynch, Pierce, Fenner & Smith, Incorporated and
 14 Merrill Lynch & Co., Inc. agree to be bound by and join in this Stipulation.

15 SO STIPULATED.

16 DATED: May 24, 2011

17 BARTKO, ZANKEL, TARRANT & MILLER
 18 A Professional Corporation

19 By _____ /s/Robert H. Bunzel
 20 Robert H. Bunzel
 21 Attorneys for Plaintiffs
 22 KEVIN MARTIN, DAVID NORRIS and FRANK
 23 STONE

BARTKO, ZANKEL, TARRANT & MILLER, A Professional Corporation
 900 Front Street, Suite 300
 San Francisco, CA 94111
 Phone (415) 356-1900 • Fax (415) 956-1152

1 DATED: May 24, 2011

2 MUNGER, TOLLES & OLSON

3

4 By /s/Victoria L. Boesch
5 Victoria L. Boesch
6 Attorneys for Defendants
7 MERRILL LYNCH, PIERCE, FENNER & SMITH,
8 INCORPORATED, MERRILL LYNCH & CO.,
9 INC., and BRIAN RILEY

10 Pursuant to the foregoing stipulation, the Court dismisses the claims against
11 defendant Brian Riley with prejudice.

12 IT IS SO ORDERED.

13 DATED: May 25, 2011

14 
15 CLAUDIA WILKEN
16 UNITED STATES DISTRICT JUDGE

17 BARTKOZANKEL
18 900 Front Street, Suite 300
19 San Francisco, CA 94111
20 Bonito, Zanchi, Grana, Miller, Loeb & Hamon, Inc. of Counsel
21 Phone (415) 956-1900 Fax (415) 956-1152

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